

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LEWIS DEAN ARMSTRONG,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

NO. 2:20-cv-00609-RAJ

ORDER ON PETITIONER'S
MOTION FOR RECUSAL

I. INTRODUCTION

This matter comes before the Court on Petitioner Lewis Dean Armstrong's motion for recusal. Dkt. #5. The Court has reviewed the motion and declines to recuse voluntarily. The Court directs the clerk to refer the motion to the Honorable Ricardo S. Martinez, Chief Judge, in accordance with the District's local rules. Local Rules W.D. Wash. LCR 3(f).

II. DISCUSSION

Armstrong has asked the undersigned judge to recuse, stating, "He is a close friend of the judge that committed perjury to help cover up the tampering of federal court records and most of all this judge made claim that anything of mine that comes in front of him he will rule against it."

The Court briefly summarizes the proceedings in this matter.

1 On March 12, 2014, after a 3-day jury trial before Judge John C. Coughenour,
2 Armstrong was convicted of one count of aggravated sexual abuse of a child. At
3 sentencing on June 23, 2015, Judge Coughenour granted Armstrong's motion to declare
4 the 30-year mandatory minimum set forth by the Sentencing Guidelines to be
5 unconstitutional in this case, and sentenced Armstrong to a 20-year term of incarceration,
6 with a lifetime of supervised release to follow.

7 On June 23, 2015, Armstrong appealed the Judgment entered by Judge
8 Coughenour to the Ninth Circuit Court of Appeals. Dkt. #118. On July 21, 2015, the
9 Government filed a cross-appeal of the sentence imposed. Dkt. #125.

10 On January 13, 2017, the Court of Appeals entered an Order granting Armstrong's
11 motion to remand for the limited purpose of making a competency determination. The
12 case was remanded to the district court for the limited purpose of determining whether
13 Armstrong was competent to understand the nature and consequences of the proceedings
14 against him and to assist properly in his post-conviction proceedings. Dkt. #147.

15 On January 18, 2017, Judge Coughenour recused himself and the case was
16 assigned to this Court for all further proceedings. Dkt. #148.

17 On March 6, 2018, this Court held a competency hearing and determined
18 Armstrong was not competent to assist in post-conviction proceedings. Dkt. #188. On
19 March 19, 2018, Armstrong appealed that determination. Dkt. #189.

20 On May 30, 2018, the Court of Appeals held in abeyance the cross-appeals on the
21 conviction and sentence pending resolution of the appeal of the competency
22 determination. Dkt. #199.

23 On March 21, 2019, the Court of Appeals entered a Memorandum dismissing the
24 appeal of the competency determination, noting that the Court of Appeals had remanded
25 for a competency determination after the government made an offer to Armstrong to
26 resolve the parties' cross-appeals of his conviction and sentence. Since the district court
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1 made its incompetency finding, however, the parties stipulated that the government had
2 withdrawn its offer. Accordingly, the Court of Appeals concluded the appeal of the
3 competency determination was moot because the offer was withdrawn, dismissed that
4 appeal, and lifted the stay on the parties' related cross-appeals. Dkt. #204.

5 On July 26, 2019, Armstrong filed a pro se "Motion for Competency Hearing."
6 Dkt. #207. On August 16, 2019, the Court entered an order declining to entertain and
7 striking Armstrong's pro se motion on the grounds that because Armstrong was
8 represented by counsel, only counsel was permitted to submit filings. Dkt. #209.

9 On September 6, 2019, Armstrong filed a second pro se "Motion for Competency
10 Hearing." Dkt. #210. On September 19, 2019, the Court entered an order again
11 declining to entertain and striking Armstrong's pro se motion on the same grounds as the
12 earlier order. Dkt. #211.

13 On April 3, 2020, the Court of Appeals affirmed in part and reversed in part
14 Armstrong's appeal of his conviction of aggravated sexual abuse of a minor and the
15 government's appeal of Armstrong's sentence. Armstrong's conviction was affirmed, but
16 the Court of Appeals found that the sentencing court erred in determining that the
17 mandatory minimum sentence under 18 U.S.C. § 2241(c) violated the Eighth
18 Amendment.

19 On May 18, 2020, Armstrong filed a Petition for Rehearing with Suggestion for
20 Rehearing En Banc with the Court of Appeals, which petition remains pending.

21 Two statutes enumerate reasons that a judge might recuse: 28 U.S.C. § 144 and
22 28 U.S.C. § 455. The first requires a demonstration of "a personal bias or prejudice
23 either against [the litigant seeking recusal] or in favor of any adverse party"
24 28 U.S.C. § 144. The second requires disqualification "in any proceeding in which [the
25 judge's] impartiality might reasonably be questioned," or in a series of specific
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1 circumstances, including when the judge has a “personal bias or prejudice concerning a
2 party.” 28 U.S.C. § 455(a) & (b)(1).


3 Both 28 U.S.C. § 144 and § 455 impose the same substantive standard for recusal:
4 “Whether a reasonable person with knowledge of all the facts would conclude that the
5 judge’s impartiality might reasonable be questioned.” *United States v. Hernandez*, 109
6 F.3d 1450, 1453 (9th Cir. 1997) (quoting *United States v. Studley*, 783 F.2d 934, 939 (9th
7 Cir. 1986)). In the seven-year history of this case, this Court’s involvement was limited
8 in scope to a determination on the very narrow issue of Armstrong’s competency to assist
9 in post-conviction proceedings. The undersigned judge finds no objective basis on which
10 a reasonable person might question his impartiality.

11 The sole reason the Petitioner looks for this Court to recuse itself is because of his
12 claim that the undersigned is a “close friend” of the Honorable John C. Coughenour.
13 That is an accurate statement but fails to consider that the Court is close friends and a
14 colleague with all of the judges in this District. That is certainly no reason to justify
15 recusal.

16 17 **III. CONCLUSION**

18 For the reasons stated above, the Court declines to voluntarily recuse from this
19 action, and directs the clerk to refer Petitioner’s motion for recusal (Dkt. # 5) to the
20 Honorable Ricardo S. Martinez, Chief Judge, in accordance with Local Rules W.D.
21 Wash. LCR 3(f).

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23 DATED this 28th day of May, 2020.

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25 The Honorable Richard A. Jones
26 United States District Judge
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